

# Agenda Item #9



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

October 26, 2010

**BY CERTIFIED MAIL AND REGULAR MAIL**

Mr. Eric Lusk  
17 Reef Road  
Cape Elizabeth, ME 04107

**Re: Late 11-Day Pre-General Campaign Finance Report Due 10/22/2010**

Dear Mr. Lusk:

*Preliminary penalty amount.* You filed a 11-Day Pre-General campaign finance report on 10/23/2010. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$28.21. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

*Requesting a waiver.* You may ask the members of the Ethics Commission to waive the preliminary penalty due to mitigating circumstances (defined below). To request a waiver, please send a letter within 14 days of receiving this notice that contains a full explanation of the reasons you filed late. If you request a waiver, the Commission staff will notify you of the date and time of the public meeting at which the Commissioners will consider your request. You or a person you designate may appear at the meeting. The Commission staff will notify you of the Commissioners' decision shortly afterward.

*Mitigating circumstances.* The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer, or campaign staff, or the harm suffered by the public from the late disclosure.

Please call me at 287-4179 if you have any questions.

Sincerely,

Sandy Thompson  
Candidate Registrar

cc: Bruce Love (by regular mail)

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

October 26, 2010

Mr. Eric Lusk  
17 Reef Road  
Cape Elizabeth, ME 04107

The Commission staff has calculated a preliminary penalty amount for the late filing of your 11-Day Pre-General campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or, please pay online using a credit or debit card at the web address listed below. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Sandy Thompson at 287-4179.

Cut Along Dotted Line

For Office Use Only:  
Account: MCGEEP  
Fund: 014 Approp: 02

To            Commission on Governmental Ethics and Election Practices  
              135 State House Station  
              Augusta, Maine 04333

From:        Mr. Eric Lusk

RE:          Penalty for late filing of 11-Day Pre-General Campaign Finance Report

Penalty ID:    1740

Amount Enclosed:    \$ \_\_\_\_\_

Check/M.O. No.:      # \_\_\_\_\_

Please Make Check or Money Order Payable to Treasurer, State of Maine  
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>

## COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

### PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

#### BASIS FOR PENALTIES

#### 21-A M.R.S.A. Section 1020-A(4-A)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Eric Lusk

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ <u>2,821.00</u>
Percent prescribed:	<u>1%</u>
	\$ <u>28.21</u>
Number of days late:	X <u>1</u>
Total penalty accrued:	\$ <u>28.21</u>

A penalty begins to accrue on the day following the due date of the report.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

#### MAXIMUM PENALTIES

#### 21-A M.R.S.A. Section 1020-A(5-A)

\$5,000 for reports required to be filed 42 days before an election,  
11 days before an election, 42 days after an election, and for 24-hour reports;  
\$1,000 for semiannual reports.

RECEIVED

NOV 10 2010

Maine Ethics Commission

Jonathan Wayne

State of Maine

Commission on Governmental Ethics & Election Practices

135 State House Station

Augusta, ME 04333-0135

November 9, 2010

**Re: Late 11-Day Pre-General campaign Finance Report Due 10/22/2010 – Requesting A Waiver**

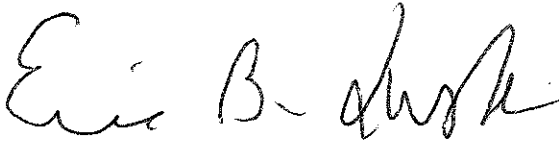
Dear Mr. Wayne,

My finance report was due on 10/22/2010. I had items up on the electronic filing site before 10/22/2010 and filled in the other items for that time period. As will happen, when I pushed the "File Report" command, I clearly did not actually file the report.

Fortunately, one of your staff, Gavin O'Brien, I believe, called the next day (Saturday) and I properly hit transmit that afternoon when I returned home. And the report WAS properly filed on October 23<sup>rd</sup>.

I'm hoping you put this under the "mitigating circumstances" category and waive the \$28.21 fine.

Regards and Thanks for A Administratively Fine Election Season --



Eric B. Lusk 17 Reef Road, Cape Elizabeth, ME 04107

House 121 Candidate

CC: Sandy Thompson, Bruce Love



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

November 12, 2010

Mr. Eric B. Lusk  
17 Reef Road  
Cape Elizabeth, ME 04107

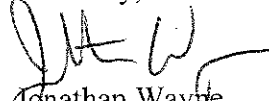
Dear Mr. Lusk:

Thank you for requesting a waiver of a late-filing penalty. Your request will be considered by the members of the Ethics Commission at their next meeting on Tuesday, November 30, 2010 at 11:00 a.m. The meeting will be held at our office at 45 Memorial Circle, 2<sup>nd</sup> floor, Augusta, Maine. You are welcome to attend the meeting in support of your request, but that is not required.

Next week, I will discuss your request with my colleagues and will write up a short memo for the Commissioners that will include a recommendation on behalf of the Commission staff. All of the materials relating to your request will be mailed to the Commissioners on November 22. That day, the agenda and materials will be posted on the Commission's website, [www.maine.gov/ethics](http://www.maine.gov/ethics).

If you have any questions, please call me at 287-4179.

Sincerely,


  
Jonathan Wayne  
Executive Director

cp

## 21-A MRSA § 1020-A. FAILURE TO FILE ON TIME

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

[ 1995, c. 483, §15 (NEW) .]

 **2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (AMD) .]

B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2009, c. 190, Pt. A, §13 (AMD) .]

[ 2009, c. 190, Pt. A, §13 (AMD) .]

**3. (TEXT EFFECTIVE UNTIL 8/1/11) Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[ 1995, c. 625, Pt. B, §5 (AMD) .]

**3. (TEXT EFFECTIVE 8/1/11) Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk in a town or city that has chosen to be governed by this subchapter on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

[ 2009, c. 366, §12 (AFF); 2009, c. 366, §6 (AMD) .]

**4. Basis for penalties.**

[ 2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§§4, 5 (RP) .]

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[ 2007, c. 443, Pt. A, §22 (AMD) .]

**5. Maximum penalties.**

[ 2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2009, c. 190, Pt. A, §14 (AMD) .]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (AMD) .]

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; [2003, c. 628, Pt. A, §4 (AMD) .]



D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (AMD).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

[ 2009, c. 190, Pt. A, §14 (AMD) .]

**6. Request for a commission determination.** If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice by certified mail to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. The notice must be sent by certified mail. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[ 2009, c. 302, §5 (RPR) .]

**7. Final notice of penalty.** If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[ 2009, c. 302, §6 (AMD) .]

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[ 2007, c. 443, Pt. A, §25 (AMD) .]

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[ 2003, c. 628, Pt. A, §6 (NEW) .]

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[ 1995, c. 483, §15 (NEW) .]

**10. Enforcement.** A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[ 2009, c. 302, §7 (RPR) .]

#### SECTION HISTORY

RR 1995, c. 1, §10 (COR). IB 1995, c. 1, §15 (AMD). RR 1995, c. 2, §38 (COR). 1995, c. 483, §15 (NEW). 1995, c. 625, §B5 (AMD). 1999, c. 426, §§32,33 (AMD). 1999, c. 729, §5 (AMD). 2001, c. 470, §§7,8 (AMD). 2001, c. 470, §11 (AFF). 2001, c. 714, §PP1 (AMD). 2001, c. 714, §PP2 (AFF). RR 2003, c. 1, §14 (COR). 2003, c. 302, §4 (AMD). 2003, c. 448, §4 (AMD). 2003, c. 628, §§A3-6 (AMD). 2007, c. 443, Pt. A, §§21-25 (AMD). 2009, c. 190, Pt. A, §§13, 14 (AMD). 2009, c. 302, §§5-7 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §6 (AMD). MRSA T. 21-A, §1020-A, sub-§4 (AMD). MRSA T. 21-A, §1020-A, sub-§5 (AMD).